United Nations CED/C/IRQ/CO/1/Add.1

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
31 May 2017
English
Original: Arabic
Arabic, English, French and Spanish only

Committee on Enforced Disappearances

Concluding observations on the report submitted by Iraq under article 29 (1) of the Convention

Addendum

Information received from Iraq on follow-up to the concluding observations*

[Date received: 15 February 2017]

* The present document is being issued without formal editing.

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Official response to the concluding observations on the report of Iraq concerning the International Convention for the Protection of All Persons from Enforced Disappearance

1. First, the Committee recommends in paragraph 14 of the concluding observations that the State party adopts the legislative measures necessary to ensure that, as soon as possible:

(a) Enforced disappearance is incorporated into domestic law as an autonomous offence, in accordance with the definition contained in article 2 of the Convention, and that the offence carries appropriate penalties which take account of its extreme seriousness;

(b) Enforced disappearance as a crime against humanity is criminalized in accordance with the standards provided for under article 5 of the Convention and regardless of the date of perpetration.

2. The response to the paragraph cited above is as follows:

3. The Iraqi Criminal Code No. 111 of 1969, as amended, contains no clear and straightforward definition of the offence of enforced disappearance in accordance with the definition contained in article 2 of the aforementioned Convention, which defines enforced disappearance as "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law". However, some acts incorporated in the definition of enforced disappearance, such as abduction, detention or arrest without a legal warrant by non-State entities, and the measures applicable to such acts do not differ greatly from the provisions of articles 322, 324, 421, 423, 424, 425 and 426 of the Iraqi Criminal Code and article 92 of the Code of Criminal Procedure No. 23 of 1971, which stipulates that: "Arrest or apprehension of a person is permitted only in accordance with a warrant issued by a judge or court or in other cases as stipulated by law." It should be noted that the content of this article is consistent with that of article 421 of the aforementioned Criminal Code, which stipulates that: "Any person who arrests or detains a person or deprives him of his liberty by any means, without an order from a competent authority and in circumstances other than those described in the applicable laws and regulations, is punishable by imprisonment."

A bill on the offence of enforced disappearance was drafted in light of the foregoing. However, the decision to abolish the Ministry of Human Rights led to a delay in the necessary procedures. After the file was transferred to the Ministry of Justice, the procedures to enact the bill and hence to incorporate it into Iraqi domestic law resumed.

5. Secondly, with regard to paragraph 29 of the concluding observations on the report of Iraq, which deals with detention and deprivation of liberty, it should be noted that article 19 (12) of the Iraqi Constitution contains an important provision prohibiting secret detention: "(a) Unlawful detention is prohibited. (b) Imprisonment or detention is prohibited in places that are not designed for such purposes, pursuant to prison legislation concerning health and social care to be provided by the State authorities." Article 19 (13) stipulates that: "The preliminary investigative documents shall be submitted to the competent judge within a period of not more than twenty-four hours from the time of arrest of the accused. This period may be extended only once for the same number of hours."

6. In addition, several articles of Memorandum No. 2 of 2003 of the (dissolved) Coalition Provisional Authority on the management of prisons and detention facilities prohibited secret detention by imposing strict documentary rules to ensure that all persons were imprisoned in accordance with legal procedures, including the maintenance of a file with numbered pages in every detention facility containing comprehensive records of every prisoner placed in the facility. In addition, important legal, health-care and organizational regulations were applicable to prisoners' situation, and prison managers were required to comply with a set of obligations to protect prison inmates. Article 7 (2) of Public

Prosecution Act No. 159 of 1979 stipulates that: "The Public Prosecution Service shall inspect detention centres run by the adult and juvenile branches of the Department of Corrections and shall submit monthly reports thereon to the competent bodies."

7. In light of the foregoing, a new bill on prison management has been submitted to the Council of Representatives to replace the above-mentioned Memorandum of the Coalition Provisional Authority. It contains regulations and provisions governing the management of prisons and detention facilities.

8. Recommendation No. 34 of the concluding observations concerning the report of Iraq states that: "all persons who were forcibly disappeared and whose fate is not yet known should be searched for and located without delay and that, in the event of death, that their remains should be identified, respected and returned. In this sense, it should also guarantee the effective coordination and cooperation between the authorities responsible for searching for disappeared persons and identifying their remains in the event of death, and ensure that they have the necessary financial, technical and human resources to enable them to carry out their work promptly and effectively. In addition, the State party should adopt the measures necessary to ensure the swift entry into force of the amendment to the Protection of Mass Graves Act (Act No. 13 of 2015), as well as the effective implementation of the legislative framework concerning mass graves. The Committee recalls that, in the light of article 24 (6) of the Convention, the State party should ensure that investigations continue until the fate of the disappeared person has been clarified."

9. With regard to the recommendation cited above, the Supreme Judicial Council, represented by the Presidency of the Public Prosecution Service, is vigorously addressing all requests from relatives of disappeared persons whose fate is unknown. It receives the requests from the Human Rights Division that was established in the Presidency of the Public Prosecution Service. All relevant parties are approached by the Division with a view to determining the fate of the missing persons and informing their relatives. A court of inquiry has been established in the centre of each appeal-court jurisdiction to investigate complaints referred to it by the Presidency of the Public Prosecution Service.

10. The Human Rights Department in the Ministry of Defence also receives through its hotlines complaints and requests from citizens for research and investigations into the fate of missing persons, which are conducted without delay in cooperation with the military sectors and in coordination with the security services in order to bring the sufferings of victims' families to an end. The file concerning prisoners and missing persons was transmitted to the Ministry of Defence pursuant to Order No. 40 of 3 January 2016 issued by the General Secretariat of the Council of Ministers. In addition, the files concerning mass graves, documentation of violations and victims of terrorism were transmitted pursuant to the aforementioned order to the Martyrs Foundation, which has a Department of Mass Grave Affairs and Protection.

11. We wish to draw attention to the first amendment to the Protection of Mass Graves Act, article 2 (b) of which reads as follows: "A mass grave is defined as land containing the mortal remains of more than one victim, who were buried or permanently concealed without respect for the legal regulations and humanitarian values that must be taken into account during internment, and who were buried in a manner intended to conceal evidence of the crime of genocide committed by an individual, a group or an institution, and is considered to be violation of human rights." This text clearly defines the offence of enforced disappearance and seeks to eliminate it, to obtain information regarding the victims and to reveal their fate. Article 2 (2) stipulates that: "The provisions of this Act shall apply to the crimes of mass graves committed under the former Baathist dictatorial regime and the crimes committed by terrorist and Baathist gangs before and after 2003." Thus, the Protection of Mass Graves Act also addresses the fate of victims of crimes committed by terrorist gangs.